



Class-action lawsuit filed over PERS overpayments

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The Associated Press

SALEM, Ore. (AP) — More than 20,000 retired Oregon public employees would be protected from having to reimburse the state pension fund for past "overpayments" into their pension accounts, under a class-action lawsuit filed last week.

The suit challenges a recent decision by the Public Employees Retirement System Board to recoup the money from the retirees by making reductions in their monthly checks.

Most of the reductions won't kick in until they can be offset by annual cost-of-living increases of 2 percent.

At stake is hundreds of millions of dollars granted to those who left public service between April 1, 2000, and March 31, 2004.

PERS agreed to recover money from those retirees after Marion Circuit Court Judge Paul Lipscomb ruled that the system put too much money into worker pension accounts from the pension fund's 1999 investment earnings.

But retirees still contest the notion that there were overpayments or that they should pay them back.

"I'm not sure it's legitimately called an overpayment," said Kathleen Beaufit, the chairwoman of Oregon PERS Retirees.

And if there were, she said, "who made the decision to make that payment?" It was the PERS Board, not the retirees, Beaufit said.

The lawsuit was filed by attorney Greg Hartman, who convinced the Oregon Supreme Court last year to overturn part of the Oregon Legislature's 2003 PERS reforms.

Hartman said the ruling in that case bars PERS from getting money back from retirees.

But Joseph Malkin, an attorney representing PERS, said Hartman's legal argument rests on "a sentence" from the Supreme Court's decision.

Elsewhere in that decision, Malkin said, the court suggested that PERS could seek other ways to get money back from retirees besides freezing their cost-of-living-adjustments.

Under state law, he said, if overpayments were made to retirees, PERS has the legal obligation to get the money back. "They don't really have a choice," Malkin said.

Information from: Statesman Journal, <http://www.statesmanjournal.com>

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Oregon PERS Retirees, Inc

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Welcome to Oregon PERS Retirees! The purpose of our organization is to provide retirement information and support to Oregon public agency workers, both retired and those still working.

Feedback Welcome. OPRI is a volunteer organization where we work together to help each other stay informed. Your feedback is important. If you know of an item that you believe would be of interest or should be brought to the attention of the OPRI members, let us know! Contact [Martha Sartain](#). (You must include OPRI in the subject line)

Update...

OPRI Board votes to join the PERS Coalition.

OPRI General member meeting planned for May 12 in Salem- The meeting will be held at St. Paul's Episcopal church building in Salem (1444 Liberty St. SE). from 10 am to noon. OPRI has invited Paul Cleary, Exec. Dir. of PERS and Greg Hartman, the attorney representing the PERS Coalition.

Breach of Contract suit files - On January 17, 2006, [a class action complaint](#) was filed in Multnomah County Circuit Court on behalf of Tier One PERS members who retired between April 1, 2000 and April 1, 2004, referred to as the "window period." To assist in supporting this effort, please send donations to the [OPRLF](#).

PERS workers repairing storm damage - We have received photos of storm damage on Hwy 101 south of Port Orford that show ODOT workers inspecting and repairing the road. [Click here to view the photos](#). If anyone captures digital photos of PERS workers helping with an emergency or event of general interest and would like to share them, contact [Greg Scott](#). Be sure to provide additional information about where and when the pictures were taken. To see [additional pictures of PERS workers](#), a new section has been added to the "About US" section.

At the Jan. 27th PERS Board Meeting, PERB:

- adopted OAR 459-005-0610, Administrative rule concerning recovery of overpayments.
- adopted [Final Order](#) regarding recovery of Overpayment
- of interest to the 313 members that failed the "one time variable transfer" in 2000, 2001, 2002, and 2003--- Staff asked that stakeholders be permitted to comment on the recommended course of action before the next Board Meeting.

Alert - Prescription Drug Benefit

If PERS retirees receive pamphlets or other mailings about the new Medicare prescription benefit urging that you send an application right away, be sure you read the information PERS has posted on its web site. <http://www.pershealth.com/Events.html> Here's what it says:

PERS Implements Enhanced Prescription Drug Benefit

Beginning January 1, 2006 there will be an enhanced prescription drug benefit for PERS members along with a decrease in the health premiums for PERS members and dependents that are enrolled in Medicare. The decrease in health plan premiums is due to the additional funds that will be available from Medicare as a result of the Medicare Modernization Act of 2003 and implementation of the new Part D drug plan.

If you are currently enrolled in a PERS sponsored health plan and are on Medicare, you will automatically be enrolled in Medicare Part D. No further action by you is required.

The benefit has been enhanced to:

- A 40 percent co-insurance (rather than the current 50 percent) up to a \$150.00 maximum per 30-day supply, per prescription. There will also be a \$3600.00 out of pocket maximum for eligible drugs per year. When a member reaches this amount in out of pocket co-insurance for covered medications, the plan pays for prescriptions at 100 percent for the remainder of the year.

PERS members who are not eligible for Medicare will have the same enhanced benefit, but unlike the PERS Medicare members, there will be no additional funding for these members to help offset the health plan premiums.

Please refer to the [2006 Member Handbook and Benefit Guide](#) for additional benefit and premium rate changes.

PERS By the Numbers - PERS has released a new report detailing system benefits, demographics, funding levels and status and revenues. It provides a wealth of information not previously available. [PERS by the numbers](#) is in PDF format.

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 MICHAEL ARKEN, DALE CANNON,
7 ROBYN CARRICO, CAROL YOUNG, JOHN
8 HAWKINS, LESLIE HUNTER, RICK
9 MULLINS, SUE RUOANALA, PATRICIA
THOMPSON WESTOVER, and MYRNA
WILLIAMS,

10 Plaintiffs,

11 v.

12 CITY OF PORTLAND, WESTERN OREGON
13 UNIVERSITY, PORTLAND SCHOOL
14 DISTRICT, CITY OF GRESHAM, LINN
15 COUNTY, UNIVERSITY OF OREGON,
16 PORTLAND COMMUNITY COLLEGE,
MULTNOMAH COUNTY, CENTRAL
SCHOOL DISTRICT 13J, FOREST GROVE
SCHOOL DISTRICT #15, and the PUBLIC
EMPLOYEES RETIREMENT BOARD,

17 Defendants.

) Case No.

) **COMPLAINT**

) Breach of Contract; Promissory
) Estoppel; Wage Claim; Injunctive
) Relief

) CLASS ACTION

) NOT SUBJECT TO MANDATORY
) ARBITRATION

18 COMMON ALLEGATIONS

19 1.

20 Plaintiffs are retired public employees who were "Tier One" members of the Public
21 Employees Retirement System ("PERS"). Defendants are public employers and the Public
22 Employees Retirement Board ("PERB"), which administers PERS.

23 2.

24 The provisions of ORS Chapter 238 create a contract between public employers and
25 public employees ("the PERS contract"). Pursuant to the PERS contract, the State of Oregon

26 //

1 and defendant public employers, acting through PERB, agreed to provide certain pension
2 benefits to plaintiffs upon retirement.

3 3.

4 Pursuant to ORS 238.300 of the PERS contract, the State of Oregon and defendant
5 public employers agreed to calculate plaintiffs' pensions under three, separate alternative
6 calculations and provide benefits based on the calculation that produced the highest benefit
7 amount. The three, separate, alternative calculation methods are:

8 (a) Full Formula. A PERS employee member is entitled to a refund annuity
9 based on the member's account, which is supplemented by an annuity
10 provided by employer contributions, so that the total annuity is equal to
11 1.67% (2% for police and fire fighters) times the employee's final
12 average salary times the employee's years of credited service.
13 ORS 238.300(1) and (2)(a).

14 (b) Money Match. The retirement benefit may not be less than the amount
15 of the refund annuity plus a match in an amount equal to that annuity,
16 provided by employer contributions. ORS 238.300(2)(b)(A).

17 (c) Pension Plus Annuity. For those PERS employee members who had
18 service prior to August 21, 1981 a third alternative calculation is
19 performed. They are entitled to the refund annuity as calculated in (a)
20 above plus an employer-funded annuity equal to 1% (1.3% for police
21 and fire fighters) times final average salary times years of credited
22 service. ORS 238.300(2)(b)(B).

23 4.

24 Pursuant to ORS 238.360(1) of the PERS contract, the State of Oregon and defendant
25 public employers agreed further to provide plaintiffs annual cost-of-living adjustments
26 (COLA) on their retirement allowance.

1

5.

2 In 2003, the Legislature passed, and the Governor signed, a number of bills (Oregon
3 Laws 2003, Chapters 3, 67, 68, and 625) drastically amending the PERS Contract.

4

6.

5 One of the 2003 amendments (Oregon Laws 2003, Ch 68, §§9-10, as amended by, Ch
6 625, §13) applied to only Tier One members who received service retirement allowances
7 pursuant to the Money Match and who retired on or after April 1, 2000, but before April 1,
8 2004. The amendment required the original service retirement allowances for affected Tier
9 One members to be recalculated in two ways, resulting in a "revised" service retirement
10 allowance and an alternative "fixed" service retirement allowance. The "revised" service
11 retirement allowance was to continue to be subject to an annual COLA under ORS 238.360(1).
12 The "fixed" service retirement allowance was set at the amount that was payable to the retired
13 member as of July 1, 2003, or as of the member's retirement date, whichever was later, and was
14 not subject to an annual COLA under ORS 238.360(1).

15

7.

16 Oregon Laws 2003, Ch 68, §§9-10, as amended by, Ch 625, §13, were challenged by
17 PERS retirees in *Strunk et al v. PERB et al*, 338 Or 145, 108 P3d 1058 (2005). In that case,
18 the Oregon Supreme Court reaffirmed that ORS Chapter 238 was a contract, that the COLA
19 and fixed service retirement allowance provisions of ORS 238.360 were a part of that contract,
20 and that suspension of the COLA from that fixed service retirement allowance was a breach of
21 that contract because the "fixed" service retirement allowance *itself* represented a *determined*
22 *allowance*-- that is, an allowance expressly determined by the legislature. In light of that
23 legislative determination, the "fixed" service retirement allowance could not be said to transfer
24 to the affected member any funds to which the member (in the legislature's determination) was
25 not entitled. As such, the "fixed" service retirement allowance fell within the scope of the
26 promise set out in ORS 238.360(1) (2001)--that is, that PERB annually apply a COLA to each

1 affected member's allowance (in years in which the CPI warrants such a COLA)- because the
2 allowance represented funds that the member, by legislative determination, was "entitled to
3 receive." The Oregon Supreme Court, therefore, voided the following language in Oregon
4 Laws 2003, Ch 68, §10(3), which provided that: "The fixed service retirement allowance may
5 not be adjusted under ORS 238.360."

6 8.

7 Despite the Oregon Supreme Court's ruling in *Strunk et al v. PERB et al*, 338 Or 145,
8 108 P3d 1058 (2005), however, to date, PERB continues to withhold COLA for the years
9 2003, 2004, and 2005 from Tier One PERS members who retired between April 1, 2000 and
10 April 1, 2004.

11 9.

12 In addition, at its meetings on September 23, 2005 and October 21, 2005, PERB
13 announced its intent to pursue collection actions against such members, pursuant to
14 ORS 238.715, to recover alleged overpayments as a result of earnings allocated to their PERS
15 accounts for calendar year 1999.

16 10.

17 Tier One PERS members who retired between April 1, 2000 and April 1, 2004 did not
18 contribute to any alleged miscalculation/overpayment made by PERB in 1999 and performed
19 all conditions precedent to receipt of the retirement benefits as calculated at the date of their
20 retirement.

21 CLASS ALLEGATIONS

22 11.

23 Plaintiffs bring this action on their own behalf and on behalf of all other persons
24 similarly situated, pursuant to ORCP 32.

25 //

26 //

1 PLAINIFF CLASS

2 12.

3 The plaintiff class is composed of Tier One PERS members who retired between
4 April 1, 2000 and April 1, 2004.

5 13.

6 The plaintiff class representatives are: Michael Arken, Dale Cannon, Robyn Carrico,
7 Carol Young, John Hawkins, Leslie Hunter, Ricks Mullins, Sue Ruonala, Patricia Thompson
8 Westover, Myrna William.

9 14.

10 Plaintiff Michael Arken was employed by the City of Portland, retired on February 1,
11 2002, is a member of the American Federation of State, County and Municipal Employees,
12 AFL-CIO ("AFSCME") and a resident of Multnomah County, Oregon.

13 15.

14 Plaintiff Dale Cannon was employed by Western Oregon University , retired on
15 January 1, 2003, is a member of the American Federation of Teachers-Oregon, AFT, AFL-CIO
16 ("AFT") and a resident of Polk County, Oregon.

17 16.

18 Plaintiff Robyn Carrico was employed by the Portland School District, retired on
19 September 1, 2002, is a member of the Oregon Education Association ("OEA") and a resident
20 of Multnomah County, Oregon.

21 17.

22 Plaintiff Carol Young was employed by the City of Gresham, Police Department,
23 retired on June 1, 2003, is a member of the Teamsters, Local 223 and a resident of Multnomah
24 County, Oregon.

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26 //

1 18.

2 Plaintiff John Hawkins was employed by Linn County, retired on February 1, 2003, is a
3 member of the Service Employees International Union ("SEIU") and a resident of Benton
4 County, Oregon.

5 19.

6 Plaintiff Leslie Hunter was employed by the University of Oregon, retired on
7 May 1, 2003, is a member of the Service Employees International Union ("SEIU") and a
8 resident of Lane County, Oregon.

9 20.

10 Plaintiff Rick Mullins was employed by Portland Community College, retired on
11 March 1, 2004, is a member of the American Federation of Teachers-Oregon, AFT, AFL-CIO
12 ("AFT") and a resident of Multnomah County, Oregon.

13 21.

14 Plaintiff Sue Ruonala was employed by the Multnomah County Sheriff's Office, retired
15 on August 1, 2003, is a member of the American Federation of State, County and Municipal
16 Employees, AFL-CIO ("AFSCME") and a resident of Multnomah County, Oregon.

17 22.

18 Plaintiff Patricia Thompson Westover was employed by the Central School District
19 13J, retired on July 1, 2000, is a member of the Oregon Education Association ("OEA") and a
20 resident of Polk County, Oregon.

21 23.

22 Plaintiff Myrna Williams was employed by the Forest Grove School District #15,
23 retired on July 1, 2000, is a member of the Oregon Education Association ("OEA") and a
24 resident of Washington County, Oregon.

25 //

26 //

1 24.

2 The class consists of over 21,563 persons. Members of the class are so numerous that
3 joinder of all of them is impracticable.

4 25.

5 Plaintiffs have suffered damages and have claims that are typical of the claims of the
6 class.

7 26.

8 The case raises common questions of law and fact. Common questions include the
9 existence and breach of retirees' PERS Contracts, liability of employers under the Oregon
10 Wage and Hour Laws for pension benefits promised to retirees, and whether PERS is
11 proceeding without probable cause in its pursuit of collection actions against retirees.
12 Plaintiffs seek damages, as well as declaratory and interlocutory, injunctive relief.

13 27.

14 Plaintiffs will fairly and adequately protect the interests of the class because there is no
15 conflict of interest between plaintiffs and the class members and because plaintiffs are
16 represented by competent counsel that will vigorously pursue their claims.

17 28.

18 Plaintiffs have complied with the pre-litigation notice requirements of ORCP 32H.

19 29.

20 A plaintiff class action is superior to other available methods of the fair and efficient
21 adjudication of this controversy as follows:

22 (a) There are thousands of affected PERS retirees and hundreds of affected PERS
23 employers. Given the large number of affected PERS retirees and employers,
24 and the number of issues present in this case, it is very probable that
25 inconsistent or varying adjudications with respect to the members of the
26 plaintiff class could establish incompatible standards of conduct for defendants;

- 1 (b) Common questions of law and fact predominate over individual questions;
- 2 (c) Defendants' treatment of all class members has been substantially the same so
- 3 as to make appropriate final relief with respect to the class as a whole;
- 4 (d) Individual plaintiffs have no interest in individually controlling the prosecution
- 5 of separate actions. The individual amounts at stake are not sufficient generally
- 6 to support the type of complex and costly litigation such as is required in this
- 7 case;
- 8 (e) It is desirable to concentrate litigation of these claims in a single forum.
- 9 Multnomah County is the most easily accessible circuit court for most all the
- 10 named parties and their counsel. The location of this case in any other circuit
- 11 court would likely produce an unreasonable financial burden on plaintiffs or
- 12 some defendants with respect to travel time, court appearances and the like; and
- 13 (f) These plaintiffs know of no other means available to eliminate or significantly
- 14 reduce the difficulty of managing this class action. Given the large number of
- 15 plaintiffs and defendants, the class action is the only reasonable method by
- 16 which to adjudicate these matters. The parties contemplate that the prosecution
- 17 of these claims as a class action will be significantly more manageable and
- 18 efficient than pursuing the claims through thousands of separate adjudications.
- 19 Without a class action, the burden of these cases on the Oregon court system
- 20 would be intolerable.

21 DEFENDANT CLASS

22 30.

23 The defendant class consists of all state and local public employers in the State of

24 Oregon. Because there are more than 800 public employers throughout the state, the defendant

25 class is so numerous that joinder of all members is impractical.

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31.

The named defendants include the City of Portland, Western Oregon University, the Portland School District, the City of Gresham, Linn County, the University of Oregon, Portland Community College, Multnomah County, the Central School District 13-J, and the Forest Grove School District #15. Plaintiffs have named appropriate defendants who are representative of the various public entities included in the class, including state, city, county, and school district employers.

32.

The named defendants are public employers who plaintiffs allege have failed or will fail to pay plaintiffs their PERS benefits in violation of plaintiffs' PERS contracts. Because defendants are being sued on the same or substantially similar contracts for identical breaches and wage and hour violations, any defenses available to the named defendants are typical of the defenses available to the entire defendant class. Accordingly, the named defendants may be sued as representative parties on behalf of all defendant class members pursuant to ORCP 32A.

33.

It is anticipated that the named defendants will be represented by experienced counsel, who will diligently pursue the interests of the defendant class and thus will fairly and adequately protect the interests of the class.

34.

A class action is superior to other methods for the fair and efficient adjudication of this controversy as follows:

- (a) There is no indication that a significant number of individual local public employers have an interest in defending their interests in separate actions;
- (b) The class members will be given notice and an opportunity to opt out of the class action should they object;

- 1 (c) This litigation will be more efficient and manageable with defendant employers
2 represented as a class, rather than individually through separate litigation;
- 3 (d) Separate defense of separate actions would create a risk of inconsistent or
4 varying adjudications with respect to members of the defendant class which
5 could establish incompatible standards of conduct for the plaintiffs or plaintiff
6 class members;
- 7 (e) Adjudication as to individual defendants would, as a practical matter, be
8 dispositive of the interests of other defendants;
- 9 (f) Much of the relief sought against defendants is injunctive and declaratory and
10 therefore affect the class as a whole;
- 11 (g) Questions of law and fact common to the defendant class predominate over any
12 questions affecting only individual members; and
- 13 (h) Defendants have no particular interest in individually controlling the defense of
14 separate actions.

15 FIRST CLAIM FOR RELIEF

16 (Contract-- Against Defendant Employers)

17 Count 1 - Breach

18 35.

19 Plaintiffs reallege paragraphs 1 through 34 above.

20 36.

21 Defendant employers have breached plaintiffs' unilateral pension contracts by
22 withholding COLA from their fixed service retirement allowance for the years 2003 through
23 2005 and pursuing collection actions under ORS 238.715 and further reduction in their future
24 benefits.

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37.
Plaintiffs are entitle to damages for this breach in an amount equivalent to the difference between the amount they are actually receiving in benefits and the amount they would have received in benefits had there been no retroactive readjustment of 1999 earnings and they had received annual COLAs for each year since their date of retirement.

38.
Plaintiffs' pension benefits, including COLA, constitute wages within the meaning of the Oregon Wage and Hour Law, ORS Chapter 652, and plaintiffs claim for breach of contract for non-payment of these benefits constitutes an action for the collection of wages within the meaning of that Law. Pursuant to ORS 652.200(2), therefore, plaintiffs are also entitled to attorney fees and costs incurred in the prosecution of this claim.

Count 2 - Promissory Estoppel

39.
Plaintiffs reallege paragraphs 1 through 34 above.

40.
At the time plaintiffs were pursuing retirement, PERB made representations to plaintiffs that they would receive pension benefits based upon the value of their PERS account at their date of retirement plus an annual COLA of up to 2 percent per year.

41.
At their date of retirement, the value of each plaintiff's PERS account included 20 percent earnings for the calendar year 1999.

42.
The representations made by PERB were made with the knowledge that they would induce action/reliance by PERS employees, including plaintiffs.

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1 43.

2 Plaintiffs did rely to their detriment upon the representations made by PERB that their
3 benefits would be calculated based upon the value of their PERS account at their date of
4 retirement and that they would receive an annual COLA of up to 2 percent per year.

5 44.

6 Plaintiffs' reliance was reasonable because at that time, PERB had the authority to
7 credit plaintiffs accounts with 20 percent earnings and prior to crediting the 20 percent
8 earnings to plaintiffs' PERS accounts, pursuant to ORS 238.670(5), PERB had notified "the
9 appropriate legislative review agency" of its crediting decision and had received no objection
10 to the proposed crediting decision.

11 45.

12 Plaintiffs are entitled to damages in an amount equivalent to the difference between the
13 amount they are actually receiving in benefits and the amount they would have received in
14 benefits had there been no retroactive readjustment of 1999 earnings and they had received
15 annual COLAs for each year since their date of retirement and to any other damages they
16 incurred in reliance upon PERB's representations.

17 46.

18 Plaintiffs' pension benefits, including COLA, constitute wages within the meaning of
19 the Oregon Wage and Hour Law, ORS Chapter 652, and plaintiffs promissory estoppel claim
20 based on the non-payment of these benefits constitutes an action for the collection of wages
21 within the meaning of that Law. Pursuant to ORS 652.200(2), therefore, plaintiffs are also
22 entitled to attorney fees and costs incurred in the prosecution of this claim.

23 SECOND CLAIM FOR RELIEF

24 (Wage Claim-ORS 652.610(3)-Against Defendant Employers)

25 47.

26 Plaintiffs reallege paragraphs 1 through 34 above.

1 48.

2 Plaintiffs PERS pension benefits, including COLA, are wages within the meaning of
3 ORS Chapter 652.

4 49.

5 Defendant employers have improperly withheld plaintiffs' wages in violation of
6 ORS 652.610(3) by withholding COLA from their fixed service retirement allowance since
7 2003.

8 50.

9 Pursuant to ORS 652.615, plaintiffs are entitled to actual damages or \$200, whichever
10 is greater.

11 51.

12 Pursuant to ORS 652.615, plaintiffs are also entitled to reasonable attorney fees and
13 costs incurred in the prosecution of this action.

14 THIRD CLAIM FOR RELIEF

15 (Claim for Injunctive Relief–Against Defendant PERB)

16 52.

17 Plaintiffs reallege paragraphs 1 through 34 above.

18 53.

19 Defendant PERB's withholding of COLA for the years 2003 through 2006 and pursuit
20 of collection actions under ORS 238.715, are without probable cause and contrary to plaintiffs'
21 rights as established by the Oregon Supreme Court in *Strunk et al v. PERB et al*, 338 Or 145,
22 223, 108 P3d 1058 (2005).

23 54.

24 Defendant PERB's withholding of COLA for the years 2003 through 2006 and pursuit
25 of collection actions under ORS 238.715, have and will continue to result in substantial and
26 irreparable harm to plaintiffs because many class members live on fixed incomes which can

1 not support further reductions and do not possess the means to institute individual legal
2 challenges to adequately protect their rights.

3 55.

4 Plaintiffs are entitled to a declaration that PERB's actions, as outlined above, are
5 contrary to law and to injunctive relief enjoining defendant PERB from continuing to withhold
6 COLAs and from proceeding with any further collection actions, under ORS 238.715, which
7 would reduce plaintiffs' fixed service retirement allowances.

8 56.

9 Plaintiffs have no plain, speedy or adequate remedy at law.

10 WHEREFORE, plaintiffs pray for judgment against defendants:

- 11 1. Declaring PERB's actions to be contrary to law;
- 12 2. Awarding damages in an amount equivalent to the difference between the
13 amount that plaintiffs are actually receiving in benefits and the amount they
14 would have received in benefits had there been no retroactive readjustment of
15 1999 earnings and they had received annual COLAs for each year since their
16 date of retirement or \$200, whichever is greater;
- 17 3. Awarding any damages incurred in reliance on Defendant PERB's
18 representations;
- 19 4. Issuing an order enjoining defendant PERB from proceeding with collection
20 actions against plaintiffs under ORS 238.715, including issuing a preliminary
21 injunction during the pendency of this case;
- 22 5. Awarding plaintiffs' costs, disbursements and reasonable attorneys fees; and

23 //

24 //

25 //

26 //

6. Awarding such other relief as the court may deem just and equitable.

Dated this 17 day of January, 2006.

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